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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/626,325	07/26/2000	JOHN S. YATES JR.	114596-28-0053BS	7939
38492	7590	10/27/2004	EXAMINER	
WILLKIE FARR & GALLAGHER LLP INTELLECTUAL PROPERTY LEGAL ASSISTANTS 787 SEVENTH AVE NEW YORK, NY 10019-6099			ELLIS, RICHARD L	
			ART UNIT	PAPER NUMBER
			2183	

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/626,325

Applicant(s)

YATES ET AL.

Examiner

Richard Ellis

Art Unit

2183

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-30 is/are allowed.
- 6) ☒ Claim(s) 31-33,35 and 37-43 is/are rejected.
- 7) ☒ Claim(s) 34 and 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20040728.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Claims 1-43 remain for examination.

2. The text of those sections of Title 35, US Code not included in this action can be found in a prior Office Action.

3. Applicant's "PETITION TO CORRECT INVENTORSHIP" filed September 10, 2004 is being treated as a petition under 37 CFR 1.48(a) to correct inventorship. As such, applicant's petition is denied because the petition lacks an oath/declaration signed by all the inventors containing a complete listing of all inventors. 37 CFR 1.48(a)(3) requires that the amendment be accompanied by: (3) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47.

MPEP 201.03(B) provides further clarification:

B. Oath or Declaration

An oath or declaration under 37 CFR 1.63 by each actual inventor must be presented. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity.

4. Claims 31-33, 35, 37-38, and 40 are rejected under 35 USC § 102(e) as being clearly anticipated by Hammond et al., U.S. Patent 5,774,686.

5. Claims 39 and 41-43 are rejected under 35 USC § 103 as being unpatentable over Hammond et al., U.S. Patent 5,774,686, as applied to claims 31-33, 35, 37-38, and 40, supra., in view of Thomas, U.S. Patent 5,386,563.

Hammond et al. and Thomas were cited as prior art references in paper number 8, mailed March 24, 2004.

6. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action, paper number 8, mailed March 24, 2004.

7. Applicant's arguments filed July 28, 2004, have been fully considered but they are not deemed to be persuasive.

8. In the remarks, applicant argues in substance:

8.1. That: "The Office Action compares the "thread" of the claim to element "500a-i" of Fig. 5b of Hammond '686. However, Hammond's elements 500a - 500i are

"handlers." An [sic] "handler" is not a "thread." See the contrasting definitions from www.wordiq.com, attached as Exhibit 1. Note that the definition of "interrupt handler" makes no mention of "thread," and vice-versa - the two are essentially unrelated concepts. Similarly, the word "thread" appears nowhere in Hammond '686.

This is not found persuasive because applicant's claim language contains no language limiting the definition of thread to applicant's argued differences, and as such, applicant's claim language does not contain applicant's argued difference.

Additionally, because applicant's claim language contains no special definition of thread, any conventionally accepted definition of thread is acceptable in determining what applicant meant by the term in the claim. Therefore, exhibit A, a printout from the Yahoo ! Education dictionary is offered. As seen on the printout, a thread is: "a portion of a program that can run independently of and concurrently with other portions of the program". Additionally, the Yahoo ! Education definition for "program" is also provided, program: "a set of coded instructions that enables a machine, especially a computer, to perform a desired sequence of operations." Accordingly, because Hammond et al.'s handler's must inherently be "programs" (a set of coded instructions that enables a machine, especially a computer, to perform a desired sequence of operations) and are executed independently and concurrently with other portions of the program (col. 5 lines 39-46 and claim 57) Hammond et al. handler's fit the accepted definition of "thread" as defined by Yahoo ! Education.

Additionally, as exhibit B, the definition of both "thread" and "process" as defined by Microsoft in the *Microsoft Press Computer Dictionary*, second edition, published October 27, 1993, over five years prior to applicant's earliest effective filing date, is also provided. Microsoft defines thread as "thread: In programming, a process that is part of a larger process or program" and defines process as "process As a noun, a program or part of a program; a coherent sequence of steps undertaken by a program - for example, an internal or external data-transfer operation, handling of an interrupt, or evaluation of a function." As seen from Microsoft, a "thread" is a "process" and a "process" encompasses "handling of an interrupt". Accordingly, as defined by Microsoft, Hammond et al.'s handler's clearly fit the accepted

definition of "thread".

Accordingly, the rejections are maintained.

"Absent an express definition in their specification, the fact that appellants can point to definitions or usages that conform to their interpretation does not make the PTO's definition unreasonable when the PTO can point to other sources that support its interpretation." In re Morris, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997).

- 8.2. That: "All obviousness rejections require a showing of "reasonable expectation of success." That showing is absent from paragraphs 14-19. Nor does the Office Action explain the structure or operation of any proposed combination of Hammond '686 and Thomas '563 - because they present such divergent approaches, it is not at all clear that they could be combined to yield any correct behavior."

This is not found persuasive because a showing of "reasonable expectation of success" was provided as part of paragraphs 14-16. As was detailed in paragraphs 1-13, Hammond et al. taught the handling of various exceptions. Hammond et al.'s unique contribution to the art was a unique way of forwarding those exceptions to the correct handler to assure correct operation of the system. However, Hammond et al. handling of those exceptions, once they were forwarded to the correct handler, was in a conventional manner. As was detailed in paragraphs 14-16, Thomas provided an enhanced manner of exception handling that allowed a system to respond to, handle, and return from exceptions at an accelerated rate (col. 2 lines 14-25, 36-40 and 50-55). Therefore, a reasonable expectation of success exists because Hammond et al. teaches the conventional manner of handling exceptions (discussed in Thomas at col. 1 lines 23-50) and Thomas teaches an enhanced method for handling exceptions it is reasonable to expect success in that Thomas's manner of accelerating the handling of exceptions would have provided an accelerating benefit to Hammond et al.'s exception handling system.

9. Claim 34 is objected to as being dependent upon a rejected base claim, but would render the base claim allowable if bodily incorporated into the base claim such that the new base claim included all of the original limitations of the base claim, any intervening claims, and the objected claim.

10. Claim 36 would be allowable if rewritten to overcome the rejection under 35 USC §

112 and to include all of the limitations of the base claim and any intervening claims.

11. Claims 1-30 are allowable over the prior art of record.
12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.


A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Richard Ellis whose telephone number is (571) 272-4165. The Examiner can normally be reached on Monday through Thursday from 7am to 5pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eddie Chan, can be reached on (571) 272-4162. The fax phone number for the USPTO is: (703)872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Richard Ellis
October 19, 2004


RICHARD L. ELLIS
PRIMARY EXAMINER